

Memorandum on Senate Bill 329

INTRODUCTION

Senator Jerry O'Neill has introduced SB329 before the 2007 Montana Legislature. The bill would allow marital fault to be considered in divorces. Specifically under this bill, marital fault would be a factor the Court could use dividing marital net worth and making awards of maintenance.

Montana joined the flood of states adopting no-fault divorce statutes in 1975 – 6 years after then-Governor Ronald Reagan signed the first no-fault divorce law in California. Divorce rates were rising during the last years of the fault divorce laws. Fault divorce was widely perceived at the time to be terrible public policy for a number of reasons.

SUMMARY

Fault divorce is still terrible public policy. I oppose this Bill. Let me summarize the basis for my opposition:

- It will harm vulnerable individuals: abused spouses and children.
- It will expand government and make it more intrusive in the lives of our citizens.
- It will make divorce more expensive.
- It will end up costing Montana more money.

DETAILS

Let me expand on these points:

1. Harming the Vulnerable.

- a. The bill includes "desertion" as part of its definition of fault. Desertion is not defined by statute, but I expect it would include one spouse leaving allegedly without the agreement of the other. We want abused spouses to leave. We don't want to give abusive spouses one more threat to throw at their victims: that they will end up with nothing because they have "deserted" the marriage.
- b. Particularly when children are involved, divorcing couples have to cooperate following the divorce. The nastier the litigation and the more bitter the feelings of the parents walking out of the Courtroom, the less likely the parents will be able to cooperatively raise their children. A finding of fault necessarily means the condemnation of one or both of the parties by the Court. It is, if nothing else, an exercise in humiliation of one or both parties.
- c. Do we really want mommy showing their 8 year old son or their 13 year old daughter a court decree finding that their daddy is an adulterer – even if it's true?

2. Expanding government and making it more intrusive in the lives of our citizens.

- a. Divorce now is one of the most intrusive governmental functions. Anything that is relevant to kids or money is admissible. A court may force any divorce litigant to reveal every account, describe any expenditure, recount their work history and future employment plans. Similarly, a court may force a divorce litigant to reveal everything about their relationship with their child. In some instances a divorce litigant may be forced to go through a psychological evaluation as a condition of unrestricted contact with their children.
 - b. This bill would remove the last shred of privacy from divorcing couples. Their sexual lives can be explored via "adultery" allegations. The history of everything they have said to their spouse can be explored via "spousal abuse" allegations (which are not limited by this bill to physical abuse).
- 3. Making divorce more expensive for individuals.**
- a. Any responsible lawyer tries very hard to settle these cases. We try not to make the process any more painful than it already is. But with fault litigation, what is at stake is a litigant's reputation in the community—and their relationship with their children. When utter humiliation is on the court agenda, divorcing couples will spend every penny they've got to win that fight.
 - b. There will be more private investigators following litigants. There will be lots more of these cases tried.
- 4. Costing more taxpayer dollars.**
- a. The more frightened and angry the litigants, the more likely they will be unable to settle the case. More of these cases will be litigated.
 - b. Family law is a substantial portion of what District Courts do.
 - c. Our District Courts are already working very hard. This bill should have a fiscal note of hundreds of thousands of dollars to hire additional Judges and supporting staff to handle the extra work load.

Finally, I should note that under existing law, evidence relevant to kids (if there are kids) or money is admissible in any divorce case. Dissipation is already in the equitable division statute as a factor to be considered, so adding dissipation by gambling, alcohol and drugs is redundant. If nonsupport is the failure of one spouse to give another money during the pendency of the divorce, that is currently admissible as well.

**Ronald Reagan was right on this issue.
This bill, however well intentioned, is wrong.
Please vote "no" as to its passage.**